

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appl. No.:	09/812,872	Confirmation No.:	1256
Appellant:	Jared J. Jackson	Customer No.:	23334
Filed:	03/19/2001	TC/A.U.:	2155
For:	SYSTEM AND METHOD FOR ADAPTIVE FORMATTING OF IMAGE INFORMATION FOR EFFICIENT DELIVERY AND PRESENTATION	Examiner:	ASAD M NAWAZ

Docket No.: ARC920010008US1 (110-A01-005)

PRE-APPEAL BRIEF REQUEST FOR REVIEW

The following remarks are submitted to be considered along with the Appellant's notice of appeal. The Examiner appears to have repeatedly misconstrued the claim language as recited for all of the pending independent Claims 1-3, 7, 9, 11, and 13, as evidenced in the several Office Actions dated March 3, 2006, October 24, 2006, and May 4, 2007, and with special emphasis to the currently pending Final Office Action dated May 4, 2007, on page 9, lines 8-12. The Examiner appears to be reading in the claims that the image delivery and image presentation parameters are separate from the session information. This reading is unsupported by a plain reading of the claim language, by the teachings in the specification, and by Applicant's arguments in the responses to the Office Actions, and consequently this reading constitutes **clear error** on the part of the Examiner. Additionally, the prior art does not teach or suggest, as presently claimed, that the image delivery parameter and image presentation parameter are contained in the session information. The Examiner therefore has failed to make a prima facie obviousness rejection under 35 USC 103. The Examiner should withdraw the Final Office Action, conduct a new search based on the correct interpretation of the claims, and either issue a new non-Final Office Action or a Notice of Allowance, for which Appellant is entitled under the Rules of the USPTO.

I. Examiner's Interpretation of The Pending Claim Language Is Clear Error As Evidenced In The Present Final Office Action

The following remarks and arguments are with respect to independent Claims 1-3, 7, 9, 11, and 13, where similar claim language exists. Claim 1 is representative of the group of claims and will be referred to herein as such.

In the present Final Office Action, dated May 4, 2007, on page 9, lines 8-12, the Examiner's response to arguments asserted the following.

In response C) the Examiner points out that **although the applicant argues that the image presentation parameters are session information, they are written as separate entities in the claims. Thus, they are given their broadest reasonable interpretation.** Therefore, Lee in view of Holtz still meets the scope of the limitations as currently claimed. **(Emphasis added.)**

The Examiner, in the present Final Office Action, on page 4, lines 6-10, specifically cited to Holtz, U.S. Patent Publication No. 20020053078A1, as teaching that the image delivery parameter and the image presentation parameter associated with the networked device **being contained in** the session information (with reference to the Abstract in Holtz). This is clear error by the Examiner.

The Appellant traverses the Examiner's finding that the claim language can reasonably be interpreted to mean that the image delivery and presentation parameters **are separate entities from the session information**. This interpretation is contrary to a plain reading of the claim language, the definition taught in the specification, and Appellant's arguments made on the record in response to Office Actions.

II. Plain Reading of Claim 1

Currently pending Claim 1, as amended in Appellant's Response dated 10/17/2005, which was entered with RCE filed on 12/12/05, recites as follows.

Claim 1 A method comprising the steps of:
 receiving a request that includes a request for delivery of image information to a networked device and session information pertaining to a current communication session between the networked device and a server, the session information being separate from the request for delivery of image information;
 determining, by at least one server within a network, based on an image delivery parameter and an image presentation parameter associated with the networked device, an image format for the image information for delivery of the image information to the networked device and for presentation of the image information at the networked device, **the image delivery parameter and the image presentation parameter associated with the networked device being contained in the session information**; and
 providing a response for the request, the response comprising at least a portion of the image information in the image format.
(Emphasis added).

As can be seen above in the highlighted copy of Claim 1, a plain reading shows that

*the image delivery parameter and the image presentation parameter associated with the networked device **being contained in** the session information.*

The normal dictionary meaning of the term "being contained in" is "**being comprised in**". This, in the context of Claim 1, means that the image delivery parameter and the image presentation parameter **are comprised in** the session information.

III. **The Specification Defines The Image Delivery and Presentation Parameters As Session Information**

It is understood from the teachings in the specification and drawings of the application that the image-delivery parameter and the image presentation parameter **are part of** the session information pertaining to a current communication session between the networked device and a server, the session information being separate from a request for delivery of image information by the networked device.

Teachings found in the originally filed specification and drawings support the presently claimed *the image delivery parameter and the image presentation parameter associated with the networked device **being contained in** the session information.*

For example, see the specification of the instant application, from page 14, line 18 through page 15, line 5. See also page 21, line 18, to page 22, line 5; and also page 27, line 15 through page 28, line 10.

Additionally, see FIG. 3, showing the image delivery parameters 330 and image presentation parameters 332 (and see also 336 and 338 for parameters specific to the second record 336 in the data base); and with reference to FIG. 3, also see the specification, from page 23, line 14, to page 24, line 2.

IV. **Applicant On The Record Has Defined The Image Delivery and Presentation Parameters As Session Information**

As recognized by the Examiner in the pending Final Office Action, on page 9, lines 8-12, the Examiner states that “the applicant argues that the image presentation parameters are session information”.

V. **Conclusion**

Therefore, in view of the discussion above, Appellant respectfully asserts that the Examiner is incorrectly interpreting the present claim language, as recited for pending independent Claims 1-3, 7, 9, 11, and 13, to mean that the image delivery and image presentation parameters **are separate** from the session information. The plain reading of the claim language, the teachings in the specification, and Applicant’s arguments in the responses to the Office Actions, all militate to precisely an opposite interpretation of the claim language. That is, the image delivery and image presentation parameters **are contained in** (are comprised in) the session information.

Additionally, while the Examiner has relied on this incorrect interpretation of the claims to find that the Holtz references teaches the specific claim language, this is clear error, as has been discussed above. No prior art of record teaches or suggests that the image delivery and image presentation parameters **are contained in** (are comprised in) the session information. The Examiner therefore has failed to make a prima facie obviousness rejection under 35 USC 103.

For the foregoing reasons, the Examiner should withdraw the Final Office Action, conduct a new search based on the correct interpretation of the claims, and either issue a new non-Final Office Action or a Notice of Allowance, for which Appellant is entitled under the Rules of the USPTO.

Respectfully submitted,

Date: **September 4, 2007**

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